THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT APPEAL NO : 416 of 2000

JUDGMENT: (Per Hon'ble Sri Justice P.Lakshmana Reddy)

This Writ Appeal is filed against the orders of learned Single Judge dated 10.12.1999 passed in W.P.No.3032 of 1998.

The relevant facts in brief are as follows:

Late J.Padma Raju, the second respondent herein joined the service of the appellant in the year 1956. He served the appellant-company without any blemish till the year 1985. But, on 19.06.1985 while he was working in housing estate as Estate Officer, a charge memo was issued alleging collection of bribes and misbehaviour with the staff and also defamatory statements against the top officials of the company. As many as seven charges were leveled against him. Late J.Padma Raju denied all those charges. Thereafter domestic enquiry was conducted and the enquiry officer found the workman guilty of the charges framed against him. Basing on the enquiry report, the company dismissed the workman from service on 16.02.1991. Late Padmaraju raised a dispute before the Industrial Tribunal-cum-Labour Court, Visakhapatnam assailing the order of the dismissal. The said Tribunal found that the enquiry report is valid and the findings of the enquiry officer is based upon legal evidence and hence the report does not suffer from any infirmity. But, the Industrial Tribunal found that the Director technical is not empowered to pass the order of dismissal and as per Rule 16(4) of the Service Rules it is only the Manager who has got the power to pass the order of the dismissal. On that ground the Industrial Tribunal declared the dismissal order as invalid and set aside the same and directed the management to reinstate the workman with

back wages with continuity of service. Aggrieved by the same, the management filed W.P.No.3032 of 1998 requesting this Court to quash and set aside the Award made in I.D.No.72 of 1993, dated 28.11.1997 by issuing a writ of certiorari or any other appropriate writ.

Before the learned single Judge it was contended by the management that the Labour Court allowed the issue to raise, without any pleading, at the time of hearing and without giving any opportunity, decided the issue holding that the Director technical, who passed the order of dismissal, has no competency and set aside the dismissal order on that ground and that in the absence of any plea in the pleadings before the Labour Court, it is not open to the workman to raise such an issue and in the absence of any such pleadings, the Labour Court is debarred to go into such an issue and to decide the same. It was further contended that even according to the workman, the service rules and regulations for monthly paid staff are not applicable to all the employees who come under the definition of workman and as per the said rules the competent officer is the manager which means the company's resident representative or any person authorized by the Managing Director of the company and that the company has duly conferred the powers from time to time to authorize the persons and accordingly the Director Technical was competent to pass the order of dismissal and hence the Labour Court was not justified in setting aside the order of dismissal on the ground of competency. It was further contended that though the instructions of the managing director are placed before the Labour Court, the Court did not consider those instructions, dated 01.07.1983 whereunder the disciplinary powers were entrusted to the Director/General Manager and therefore the impugned order passed by the Director Technical is proper and just and the action of the Labour Court in setting aside the dismissal order without reference to the revised rules is not proper and just and at any rate the management should have been given sufficient opportunity before deciding the issue one way or the other.

The said contentions were repelled by the counsel for the workman before the learned Single Judge contending that the issue regarding the competency of the authority was raised before the Labour Court and specific issue was also framed by the Labour Court and therefore it is not open to the management to contend that they have taken by surprise and that *in spite* of issue raised at the

earliest point of time, the management did not place any rules showing the competency of the authority who passed the dismissal order. It was further contended on behalf of the workman that the management field a copy of the instructions without even any

affidavit to receive it as additional evidence after the matter was reserved for orders and that these instructions were issued on provisional basis in the years 1983 with a rider that there would be a review after six months and it is not clear whether those rules are still in existence or not and therefore the Labour Court rightly rejected the said instructions in view of the proviso to Section 11-A of the Industrial Act, which contemplated that the Labour Court has to decide with reference to the material on record and not after receiving any fresh material.

The learned single Judge considered the rival contentions and held that sufficient opportunity was given to the management to prove the competency of the Officer who issued the dismissal order and inspite of that the management failed to prove that the Director technical was authorized in the year 1991 to pass the dismissal order against the workman and that the workman raised the dispute regarding the competency of the officer at the earliest opportunity and therefore the Labour Court was justified in accepting the contentions raised by the workman in respect of the competency of the officer and rightly decided the dispute in favour of the workman. The learned single Judge further observed that the order of the dismissal was passed in the year 1985 and the Award was passed in the year 1987 and the management did not even place any material before the Tribunal and hence the Court does not find any justification even to remit the matter back to the Labour Court to give an opportunity to the management. With the above observations, the learned single Judge dismissed the writ petition.

Aggrieved by the said dismissal of the Writ Petition, the management preferred the present appeal contending that the learned single Judge erred in rejecting the contentions raised on behalf of the appellant-company as the learned single Judge misled himself in observing the issue was raised by the workman at the earliest point of time and that the learned single Judge grossly committed an error in observing that the company did not justify its action by placing the relevant material either rules or instructions whereunder the Director technical

was empowered to pass the order of dismissal, though, in fact, the appellant has filed the Instructional Order No. CMD/IO/20/83, dated 23.06.1993 filed along with the writ petition which clearly reveals that the Director technical is competent to impose the punishment of dismissal against the workman.

During the course of hearing of the appeal, the learned counsel for the appellant reiterated the very same contentions raised in the Writ Petition and also reiterated the contentions raised in the grounds of appeal.

On the other hand, the learned counsel for the workman submitted that the workman is now no more and he served the company for about 30 years without any blemish and that the Tribunal framed a specific issue as to whether the dismissal order is valid and answered the point and therefore it is not open for the management to state that sufficient opportunity was not given to the management to prove that the Director technical was empowered to pas the dismissal order and that the learned single Judge rightly confirmed the orders of the Labour Court and there is no need for interference by this Division Bench with the orders of the learned single Judge.

The point for that arise for determination in this appeal is:

> Whether the orders of the learned single Judge confirming the orders of the Labour Court are not sustainable in law?

POINT:

When a dismissal order is challenged as it is not in accordance with law, it is the primary duty of the management to prove that the dismissal order was passed in accordance with law by the competent authority. It is immaterial whether the workman took the specific stand in the pleading tha the authority who passed the dismissal order is not competent to pass such an order. At any rate, a specific issue was framed by the Labour Court to the effect whether the dismissal order is valid? As seen from the order of the Industrial Tribunal, the learned Presiding Officer of the Labour Court considered the contentions raised on behalf of the management regarding the competency of the offeicer who passed the dismissal order in this case. In fact, the management came forward with such an instructional order for the first time along with its memo of arguments filed on 29.9.1997 after the award was reserved and on account of

that, the matter was reopened and heard. But the Labour Court considered the issue as to whether additional evidence can be permitted to be adduced by the management for the first time during the proceedings under Section 11-A of the Industrial Disputes Act. The learned Presiding Officer of the Labour Court found that the management ventured to file the instructional order at the belated stage showing utter indifference to the right of other party to assail it and that its reception clearly falls within the mischief that is sought to be avoided by the proviso contained under Section 11-A of the Industrial Disputes Act. The Labour Court gave cogent reasons in support of its finding that the dismissal order suffers from an incurable illegality that has been dealt with by the ratio laid down by the Apex Court in the decisions reported in **1984 (Supp) SCC Page 520, 1989-(3) SEC 132, and 1968 (16) FLR 325.** The learned single Judge did not accept the contention of the appellant-management that the Labour Court passed the orders without giving sufficient opportunity to prove the competency of the officer who passed the dismissal order. The learned single Judge observed that the issue was raised by the workman at the earliest point of time and the issue was kept open for decision at the final stage and at the time of final hearing when the workman has advanced this argument, the management did not justify its action by placing the relevant material either Rules and Instructions whereunder the Director technical was empowered to pass the order of dismissal and that after suffering an order from the Labour Court and the employer has come up before this Court contending that the issue was raised by surprise and decided by the Labour Court without giving an opportunity. As there is a specific issue regarding the validity of the dismissal order framed by the Labour Court, we entirely agree with the observations of the learned single Judge that the contention of the management that sufficient opportunity was not given is devoid of merits. We are satisfied with the reasons given by the Labour Court in support of its finding that the dismissal order is not valid and is not in accordance with law. Therefore, in our considered view, the learned single Judge rightly confirmed the order of the Labour Court and dismissed the Writ Petition. We do not find any reasons to interfere with the findings of the learned single Judge and hence the writ appeal is liable to be dismissed.

IN THE RESULT, the Writ Appeal is dismissed confirming the order dated 10.12.1999 passed by the learned single Judge in

W.P.No.3032 of 1998. There shall be no order as to costs.

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T.MEENA KUMARI, J

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P.LAKSHMANA REDDY, J

Dated:05-08-2005.

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